

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Friday, June 8, 2015 – 9:00 a.m. – Room 445 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. Curtis Oda, House Chair
Sen. J. Stuart Adams
Sen. Jim Dabakis
Sen. Gene Davis
Sen. Mark B. Madsen
Rep. LaVar Christensen

Rep. Carol Spackman Moss
Rep. R. Curt Webb
Rep. Mark A. Wheatley

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Christine R. Gilbert, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Stephenson called the meeting to order at 9:16 a.m.

MOTION: Sen. Dabakis moved to approve the minutes of the May 8, 2015, meeting. The motion passed unanimously. Sen. Davis, Sen. Madsen, Rep. Christensen, and Rep. Oda were absent for the vote.

2. Current State Law and Policy Governing Police Use of Force

Mr. Hunsaker gave an overview of current state law and policy governing police use of force, reviewed the statutory language related to when an agency's action requires or does not require rulemaking, and highlighted the Administrative Rules Review Committee's oversight responsibilities. Mr. Hunsaker stated that currently there are no administrative rules governing police use of force. He referred committee members to "Section 76-2-404 Peace Officer's Use of Deadly Force," "Draft: Utah Department of Public Safety Policy on Use of Force," and "Utah Code 63G-3-201 When Rulemaking is Required," which were provided in the mailing packet.

Ms. Gilbert commented on circumstances under which an agency's internal policy might need to be in rule, and discussed whether the Department of Public Safety's use of force policy triggers a rulemaking requirement.

Chair Stephenson asked staff to look at case law relating to when an agency's internal policy needs to be in rule, and he asked the committee to consider whether a policy, such as the policy governing police use of force, should be placed in rule so that it applies to all law enforcement agencies throughout the state.

Chair Stephenson turned the chair to Rep. Oda.

3. Officer Training: De-escalating Situations

Sheriff James O. Tracy, Utah County Sheriff, and President, Utah Sheriffs' Association, stated that the association believes every officer should receive basic crisis intervention awareness training through the Police Officer Standards and Training (POST) program.

Sheriff Tracy briefed committee members on statistics derived from records in his department that indicate only 0.38% of incidents result in any type of hands-on contact with individuals. He stated that, over five years, use of deadly force occurred in .0019% of incidents responded to by the department. In response to

Sen. Stephenson's inquiry regarding a uniform rule governing police use of force, Sheriff Tracy's response was affirmative.

Chief Bryan Roberts, Draper City Police Chief, and Board Member, Utah Chiefs of Police Association, noted that similar statistics indicate that there is not an epidemic of police use of force across the state. Chief Roberts concurred with Sheriff Tracy that new officers should receive general crisis intervention training through POST, and more specialized CIT training later in the officer's career.

Sheriff Tracy and Chief Roberts responded to committee members' questions. No action was taken on this item.

4. Psychological Evaluations of Police Officers

Sheriff Tracy stated that he believes that psychological evaluations are important for all law enforcement officers. He discussed the usefulness of the psychological evaluation process when initially looking at applicants for hire and fitness for duty evaluations for seasoned officers.

Chief Roberts described the battery of tests that make up a candidate's psychological evaluation.

Lt. Wade Brewer, Peace Officer Standards and Training, explained that although POST is not a hiring agency it is required to ensure that trainees have met specific requirements, including the completion of background investigations and an application that provides information as to the physical and mental ability of an applicant to succeed as a law enforcement officer.

Major Mike Kuehn, Utah Highway Patrol, noted that psychological profiles can change over time and that supervisors are trained to recognize troopers who are in need of counseling.

Ms. Kelly Chin, Human Resource Analyst, Department of Human Resource Management, reported that psychological testing is one of the last steps of the pre-employment process. She said that the psychologist her department uses follows the International Association of Chiefs of Police's guidelines, which tests a candidate in many areas, including assertiveness, social competence, stress tolerance, impulse control, substance abuse, flexibility, and teamwork.

5. R277-417 Prohibiting LEAs and Third Party Providers from Offering Incentives or Reimbursements for Enrollment or Participation

Sen. Stephenson briefed the committee on the issue, which involves a rule from the State Board of Education that is intended to prohibit inappropriate enrollment incentives, but may limit an LEAs ability to provide certain appropriate and necessary educational tools.

Ms. Gilbert referred committee members to "R277-417 Prohibiting LEAs and Third Party Providers from Offering Incentives or Reimbursements for Enrollment or Participation" and "Emergency Rule 277-419-9 Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors," which were included in the mailing packet.

Mr. Dave Crandall, Chair, State Board of Education, noted that there is a balance required between prohibiting inappropriate incentives to students and families and ensuring that LEAs are allowed to provide educational tools, like electronic devices, to students on a temporary basis.

Ms. Jennifer Johnson, Second Vice Chair, State Board of Education, discussed the challenges of updating rules in an effort to balance the online environment with accountability for the state assets that the LEAs have.

Ms. Angie Stallings, Associate Superintendent of Public Instruction, briefed the committee on the history of R277-417 and stated that, in her opinion, the rule would not prohibit an LEA from buying educational tools, such as laptop computers, and allowing students to use those tools for as long as the LEA deems fit. She discussed fee waivers and indicated that LEAs are always able to provide learning tools to students if they qualify under a fee waiver.

Mr. Matt Bowman and his wife, Ms. Amy Bowman, related several experiences their children had in both public and charter schools, which encouraged significant learning opportunities, and which they feel may be prohibited in the future due to the rule.

Mr. Crandall agreed to keep the committee informed as to the status of the rule and to report back in a future meeting after the State Board of Education reviews the rule.

6. Committee Business

Future meetings were scheduled for July 7 and August 19, 2015.

7. Adjourn

MOTION: Sen. Adams moved to adjourn the meeting. The motion passed unanimously. Sen. Davis and Rep. Wheatley were absent for the vote.

Chair Oda adjourned the meeting at 12:42 p.m.